February 28, 2013

Ms. Krysa Von Burg
Department of Toxic Substances Control
Regulations Section
P.O. Box 806
Sacramento, California 95812-0806
Via E-mail: gcregs@dtsc.ca.gov

RE: Comments on proposed post-hearing changes of the Safer Consumer Products Regulation (R-2011-02)

Dear Ms. Von Burg:

The American Chemistry Council (ACC) respectfully submits the attached comments on the Department of Toxic Substances Control’s (DTSC) proposed Safer Consumer Products Regulation Post-Hearing Changes of January 2013.

ACC and its member companies believe that consumers deserve to have confidence that the products they buy are safe for their intended uses. ACC members invest significant resources in product and environmental stewardship and share a common commitment to advancing the safe and secure management of chemical products and processes. We believe that health, safety, and environmental protection policies are most effective when they incorporate risk-based priorities and decision-making processes. It is in this spirit that we offer our comments on the proposed regulation.

For the last five years ACC has actively and constructively engaged DTSC on the California Green Chemistry Initiative. We are an active member of the Green Chemistry Alliance (GCA) and support GCA’s comments on the proposed regulation. ACC and our GCA partners believe that DTSC should foster a meaningful, practical, and legally defensible regulatory environment. While DTSC has made changes that minimally improve the “workability” of the proposed procedures, we are disappointed that the proposed regulations fall short of achieving the critical test of clarity, necessity, authority, and consistency required by California administrative law. At best the proposed regulation will produce only marginal improvement in human health and environmental safety, but at great expense and lost opportunities for businesses nationwide.

We appreciate certain aspects of the proposed regulation, but on balance we believe DTSC has developed a proposed regulation that creates uncertainty, goes beyond what is necessary to meet the intent and purpose of the authorizing statute, and, in several instances, goes beyond the
authority provided in the statute. We are very concerned that the approach will stifle innovation and competition by creating an unpredictable and burdensome regulatory environment for consumer product manufacturers and all parties in their supply chains.

Compliance will be extremely difficult given the uncertainty of meaning and intent of much of the regulation. Ironically, DTSC is proposing such a regulation at a time when Governor Brown is looking for ways to “search out and strip away any accumulated burdens or unreasonable regulations that stand in the way of investment and job creation” in order to put more than two million Californians back to work.¹ DTSC clearly neither considered nor appreciated the difficulty of compliance with and enforcement of these regulations and their far reaching impacts on competitiveness. Perhaps the only certain choice any party in a product supply chain facing an alternatives assessment required by the regulation is to exit the California market. Yet even that decision comes with its own reporting and compliance burdens.

DTSC revised and issued for public review and comment the Initial Statement of Reasons prior to publishing the revised regulatory proposal. DTSC has offered no insight as to why a number of changes were made, and failed to address the constructive feedback and analysis offered by ACC, GCA, and other industry stakeholders. ACC’s comments provided October 11, 2012, are referenced in the following comments to highlight issues that were not addressed by DTSC (see attachment). We look forward to DTSC’s response to all comments.

In summary, ACC appreciates that DTSC has engaged all stakeholders throughout the regulation development process. However, we are disappointed that DTSC has ignored many of the substantive comments and suggestions that GCA members have provided and has chosen instead to release a proposed regulation that fails critical tests of clarity, necessity, consistency, and authority mandated by California law. As drafted, the proposed regulation has significant consequences for businesses and their employees within and beyond the borders of California. We hope that our comments and questions will encourage DTSC to re-consider some of the choices it has made in developing the proposed regulation and that DTSC will modify and significantly improve the final regulation.

Sincerely,

Emily V. Tipaldo
Manager, Regulatory and Technical Affairs

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